

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES**

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of)
Beverly Dittmar and her minor children,)
)
Charging Party,)
)
v.)
)
Elite Properties of Iowa, LLC,)
and Robert K. Miell,)
)
Respondents.)
_____)

HUDALJ: 09-M-113-FH-40

FHEO No: 07-09-0078-8

**SECRETARY'S MOTION FOR DEFAULT ORDER SPECIFYING
DAMAGES AND CIVIL PENALTIES**

COMES NOW the Secretary of the United States Department of Housing and Urban Development (HUD or Agency), on behalf of Beverly Dittmar and her minor children, and hereby moves Administrative Law Judge (ALJ) J. Jeremiah Mahoney, subsequent to his granting HUD's Motion for Default Judgment on December 21, 2009 (Attachment 3), to now issue a Default Order Specifying Damages and Civil Penalties, without an administrative hearing, pursuant to procedural precedent set out in HUD v. Gruzdaitis, 2A FH.—FL. (P-H) ¶ 25,137 at 26,133 (HUDALJ 1998) (1998 WL 482759). In the alternative, HUD moves the ALJ to order that the hearing scheduled for February 23, 2010, in or around Cedar Rapids, Iowa be conducted telephonically.

As set out more fully in the attached Memorandum of Points and Authorities, HUD v. Gruzdaitis establishes a procedural precedent for waiver of a hearing on damages. In Gruzdaitis, Respondent refused to participate in the fair housing process. Respondents repeatedly ignored or

rebuffed HUD's attempts to investigate and conciliate the fair housing complaint against them and subsequent to the Charge failed to answer it or respond to any document served on them during the pendency of the administrative case. Pursuant to a motion filed by HUD, the ALJ thereafter entered a Default Judgment. After the ALJ entered a Default Judgment, HUD filed a Motion for Default Order Specifying Relief and an affidavit from the Complainant in support of the Motion. Respondents did not respond to the Motion for Default Order Specifying Relief, despite notice that failure to do so would waive their right to object and their right to an oral hearing regarding the relief sought by HUD. Because the allegations in the Charge were deemed admitted pursuant to the Default Judgment and relying on the uncontroverted statements in the Complainant's affidavit, the ALJ issued a Default Order Specifying Damages in lieu of conducting an administrative hearing on damages.

The situation in the current case is similar to the facts in Gruzdaitis. Respondents, who were defiant and uncooperative during the course of the HUD investigation, have proven unwilling subsequent to the Charge to defend this action, participate in any way, or respond to repeated communication efforts by HUD. For example, Respondents refused to comply with each of the ALJ's explicit orders set out in the Notice of Hearing and Order issued October 23, 2009, by not responding to the following: (1) November 1, 2009, deadline to provide Respondents' Answer to the Charge; (2) December 1, 2009, deadline to provide HUD its Witness List; and (3) the December 8, 2009 deadline to exchange exhibits with HUD. (Attachment 4) Additionally, Respondents have refused to participate in discovery or respond to HUD's Motion for Default Judgment filed on November 19, 2009, and subsequently granted on December 21, 2009. Respondents have also failed to respond to HUD's numerous attempts to contact Respondents via phone and mail to coordinate discovery and discuss conciliation. Based

on this continued and blatant pattern of refusal to participate, it is highly unlikely Respondents will participate in the upcoming damages hearing scheduled for February 23, 2010.

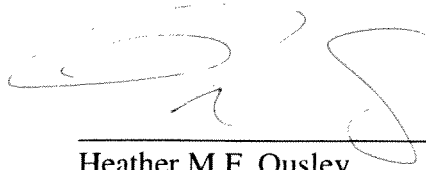
Respondent Miell, who has declared personal bankruptcy and is currently incarcerated in Linn County Correctional Center awaiting sentencing on counts of mail fraud, tax fraud and perjury (Attachment 2, CH ¶ 5), has not asserted a reason for his refusal to participate. In light of such refusal to participate in the proceedings, it would be an inefficient use of government resources to arrange for and conduct an administrative hearing on damages in or around Cedar Rapids, Iowa. Further, the Complainant in this matter has provided an affidavit (Attachment 9(A)) for consideration by the ALJ in determining damages. The Agency anticipates that no witnesses will testify on behalf of HUD.

Should Respondents wish to challenge the Agency's request for a Default Order Specifying Damages and Civil Penalties, without an administrative hearing, they have the opportunity to respond to this motion and assert their wishes to proceed.

Accordingly, the Secretary requests the immediate issuance of the Notice of Waiver of the Oral Hearing (Attachment 8) and subsequent issuance of an Order of Default Judgment Specifying Damages and Civil Penalties, or in the alternative, requests the ALJ to order that the hearing scheduled for February 23, 2010, in Cedar Rapids, Iowa be conducted telephonically.

The Secretary has set forth the basis for this Motion in the accompanying Memorandum of Points and Authorities.

Respectfully submitted,



Heather M.F. Ousley
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400 State Avenue
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(913) 551-6830

Date: February 3, 2010

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Motion for Default Order Specifying Damages and Civil Penalty" and supporting memoranda and attachments, including Complainant's Affidavit and Government Exhibit Binder, in HUD (Dittmar) v. Miell, et al., HUDALJ 09-M-113-FH-40 was sent to the following individuals in the manner indicated:

By FedEx Overnight:

Beverly Dittmar
1731 K Avenue NE
Cedar Rapids, IA 52402

Cameron Vail, Jenah Vail and Deenah Dittmar
c/o Beverly Dittmar
1731 K Avenue NE
Cedar Rapids, IA 52402

Robert K. Miell
1956 1st Avenue NE, Suite C
Cedar Rapids, IA 52402

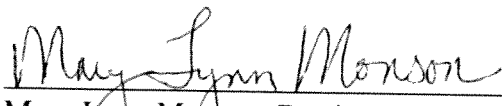
Robert K. Miell
c/o Linn County Correctional Center
53 3rd Avenue Bridge
Cedar Rapids, IA 52406

Elite Properties of Iowa, LLC
c/o Robert K. Miell, Registered Agent
1855 1st Avenue SE
Cedar Rapids, IA 52402

Elite Properties of Iowa, LLC
c/o Renee K. Hanrahan, Bankruptcy Trustee
1956 1st Avenue NE, Suite C
Cedar Rapids, IA 52402

Docket Clerk
Office of Administrative Law Judges
409 3rd Street, S.W., Suite 201
Washington, DC 20024

on this 3rd day of February, 2010.


Mary Lynn Monson, Paralegal Specialist
U.S. Department of Housing
and Urban Development
Gateway Tower II
400 State Avenue
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The Secretary, United States)
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Development, on behalf of)
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HUDALJ: 09-M-113-FH-40

v.)

FHEO No: 07-09-0078-8

Elite Properties of Iowa, LLC,)
and Robert K. Miell,)

Respondents.)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HUD'S
MOTION FOR DEFAULT ORDER SPECIFYING DAMAGES AND CIVIL PENALTIES**

HUD hereby submits this memorandum in support of its Motion for Default Order Specifying Damages and Civil Penalties, without an administrative hearing, pursuant to procedural precedent set out in HUD v. Gruzdaitis, 2A FH.—FL. (P-H) ¶ 25,137 at 26,133 (HUDALJ 1998) (1998 WL 482759). In the alternative, HUD moves the ALJ to order that the administrative hearing scheduled for February 23, 2010, in or around Cedar Rapids, Iowa be held telephonically. The basis for this request is set out in the details of this memorandum, and includes, most significantly, the Respondents' failure to participate in the administrative process.

Background on Respondents' Failure to Participate

Throughout the HUD investigation, Respondent Miell was defiant and uncooperative. As detailed throughout the Charge of Discrimination ("Charge"), from which all facts have been deemed admitted pursuant to the ALJ granting HUD's Motion for Default Judgment on

December 21, 2009, (Attachment 3) Respondents refused to cooperate in the investigation as outlined below (Attachment 2):

<u>Investigative Matter</u>	<u>Date</u>
(1) Referral of Case from Cedar Rapids Civil Rights Commission to HUD	12/18/2008

The Cedar Rapids Civil Rights Commission referred the case back to HUD stating in the referral letter: "[T]he respondent is problematic and very defiant. We feel the full authority and resources of your office would be better suited to deal with this matter."

(2) Phone Interview with Investigator	2/6/2009
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Respondent hung up.

(3) Phone Interview with Investigator	3/13/2009
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Respondent stated the investigation was a waste of time, and that he hoped the investigator would get "a badge from the Wizard of Oz."

(4) Scheduled Onsite Interview	3/19/2009
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Respondent left without notice, failed to return phone calls and failed to provide all of requested documents.

Respondents' lack of cooperation in the case continued after the filing of the Charge. As detailed in HUD's Motion to Impose Sanctions or Compel Discovery submitted on December 21, 2009 (Attachment 4), Respondents failed to meet the following administrative deadlines or respond in any manner as follows:

<u>Item to be Proffered</u>	<u>Date Response Due</u>
(1) Answer to the Charge	November 1, 2009
(2) Exchange of Witness Lists	December 1, 2009
(3) Exchange of Exhibits	December 8, 2009
(4) Motion for Default	November 26, 2009
(5) Request for Admissions	December 11, 2009

- | | | |
|-----|--|--------------------------|
| (6) | Request for Production of Documents | December 17, 2009 |
| (7) | Request for Interrogatories | December 17, 2009 |
| (8) | Motion to Impose Sanctions/Compel Discovery | December 23, 2009 |

Additionally, Respondents have failed to respond to any of HUD's attempts to communicate regarding the proceedings. On December 11, 2009, HUD counsel sent a letter to Respondent Miell, who is not represented by counsel, asking him to contact HUD counsel. HUD counsel also left phone messages for Respondent Miell with the Linn County Correctional Center (LCCC) operators on the following dates: December 7, 8, 9, and 14 of 2009 (Attachment 6). Despite these attempts by HUD, Respondent Miell made no contact with HUD counsel.

Since the filing of the Charge, Respondent Miell has not provided any reasons for his refusal to participate in the administrative proceedings. Respondent's past refusal to participate, his current incarceration at LCCC (Attachment 7), and his personal bankruptcy (Attachment 9(B) GX #1) make it highly unlikely that he will agree to participate in the oral hearing on damages scheduled for February 23, 2010 in or around Cedar Rapids, Iowa.

Based on the foregoing and in anticipation of Respondents' refusal to participate, HUD requests the oral administrative hearing on damages be waived and all evidence on damages be submitted in written form, including by written affidavit of Complainant (Attachment 9(A)). Such request will not prejudice the parties and will allow for an expedient and reasonable means to conclude the case, allowing the Agency to avoid expending unnecessary funds.

Applicable Law

Case law:

In HUD v. Gruzdaitis, 2A FH.—FL. (P-H) ¶ 25,137 at 26,133 (HUDALJ 1998) (1998 WL 482759), Respondents Joseph and Ana Gruzdaitis failed to file an Answer to a Charge of Discrimination, and pursuant to a motion by HUD, the ALJ entered a Default Judgment

against Respondents on May 5, 1998. On May 26, 1998, HUD filed a Motion for Default Order Specifying Relief. Respondents failed to file a response to the Motion for Default Order Specifying Relief, despite notice that failure to do so would waive their right to object and their right to an oral hearing regarding the relief sought by HUD. Id. In Gruzdaitis, Respondents ignored or rebuffed all attempts by HUD to investigate the case prior to the issuance of the Charge, failed to file an Answer to the Charge, and then continued to refuse to respond to any document served upon them during the pendency of the case. Id. at 26,137. Subsequent to the filing of the Motion for Default Order Specifying Relief, HUD submitted an affidavit from the Complainant in support of the Motion. Without conducting an oral hearing, ALJ Thomas C. Heinz then issued an initial decision specifying damages and a civil penalty based on the Motion and Complainant's uncontested affidavit. Id. at 26,133.

HUD Regulations:

The waiver of the right to appear at an oral hearing is addressed in 24 C.F.R. § 180.610, which states:

If all parties waive their right to appear before the ALJ, the ALJ need not conduct an oral hearing. Such waivers shall be in writing and filed with the ALJ. The ALJ shall make a record of the pleadings and relevant written evidence submitted by the parties. These documents may constitute the evidence in the proceeding, and the decision may be based upon this evidence.

A plain reading of the regulation, the language of which is the same as in 1998 when Gruzdaitis was decided, indicates that a waiver of an oral hearing may occur if all parties file a written waiver. In the case at hand, Respondents have not filed a written waiver. However,

24 C.F.R. § 180.105(d) allows the ALJ to modify the requirement that *all* parties file a written waiver as follows:

Except to the extent that a waiver would otherwise be contrary to law, the ALJ may, after adequate notice to all interested persons, modify or waive any of the rules in this part upon a determination that no person will be prejudiced and that the ends of justice will be served.

Respondents will not be prejudiced and the ends of justice will be served if the ALJ grants HUD's motion and waives the oral hearing on damages. HUD counsel has attached all pertinent evidence regarding damages to this motion including: (1) HUD's Memorandum in Support of Damages (Attachment 1); (2) Complainant Dittmar's affidavit (Attachment 9(A)); and (3) HUD's exhibit binder (Attachment 9). Respondents therefore have ample opportunity to review all evidence that would be submitted at a hearing. Pursuant to 24 C.F.R. § 180.430(b), Respondents shall have seven days to file a response to this motion and may object at that time to HUD's request for waiver of the hearing. Pursuant to the regulation, a failure to respond constitutes a waiver of any objection to the granting of the motion. Attached to this motion is a sample notice to be issued by the ALJ (Attachment 8), providing adequate notice to Respondents that failure to respond to this motion will result in the waiver of their right to a hearing on damages.

The regulation at 24 C.F.R. § 180.105(c) offers further support that the ALJ should grant HUD's Motion for Default Order Specifying Damages and Civil Penalties. It provides that "[h]earings under this part shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record."

Given the likelihood that Respondents will not participate in the hearing, the logistics of arranging for and conducting one, under the circumstances present in this case, would be an inefficient use of government resources and, accordingly, an unnecessary burden to the Agency. For example, due to the unique circumstances of Respondent Miell's incarceration in LCCC, a hearing room outside of the LCCC would have to be reserved, most likely at the local court house (Attachment 6). Additionally, according to Linn County Attorney Dianne Albers, the ALJ would be required to issue a Transport Order so corrections officers could move Respondent Miell from the LCCC to the hearing room (Attachment 6). Local corrections officer(s) would thereafter be required to attend all proceedings. A court reporter would have to be arranged and compensated, whether Respondents showed up to participate in the hearing or not. Finally, HUD would be required to expend travel funds for at least one attorney to travel to Cedar Rapids, Iowa, located approximately 322 miles from HUD's regional office in Kansas City, Kansas. Given that HUD has no plans to call witnesses and Respondents have been completely unwilling to participate in the process, granting HUD's Motion for Default Order Specifying Damages and Civil Penalties would allow the proceedings to be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties. Additionally, the parties would have a complete record because of the issuance of the Default Judgment granted on December 21, 2009, and the resulting matters now deemed admissions; the submission of Complainant's affidavit (Attachment 9(A)); and the Respondents' current opportunity to respond to HUD's Motion for Default Order Specifying Damages and Civil Penalties.

The decision by the ALJ in Gruzdaitis to issue an initial decision without an oral hearing, as requested in this Motion, is supported by other rules and regulations. Pursuant to 24 C.F.R. §

180.605, a fair housing hearing shall be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 551-559, which states:

A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or *determining claims for money* or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, *adopt procedures for the submission of all or part of the evidence in written form.*

5 U.S.C § 556(d) (2009) (Emphasis added)

Additionally, 24 C.F.R. § 180.105(b) provides that in the absence of a specific provision in HUD's regulations, the Federal Rules of Civil Procedure ("FRCP") shall serve as a general guide. FRCP 55 concerning default judgments states "the court *may* conduct hearings ... when, to enter or effectuate judgment, it needs to: (A) conduct an accounting; (B) determine the amount of damages" (Emphasis added). The language in the rule allows for the court's discretion in determining if the hearing is indeed necessary.

Conclusion

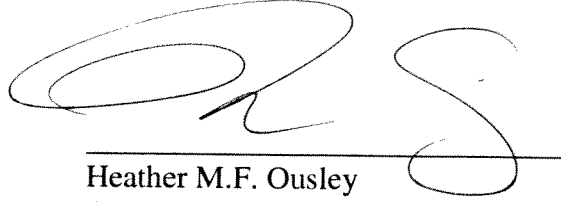
In summary, a review of the applicable case law and rules and regulations pertaining to administrative hearings supports that hearings on damages may be waived when no parties are prejudiced by the waiver, adequate notice is given to the parties, the ends of justice are served and the process is fair, and there is a complete record of the matter. These criteria are met in the instant case. Further, granting HUD's Motion for Default Order Specifying Damages and Civil Penalties in lieu of an oral hearing permits the proceedings to occur as expeditiously and

inexpensively as possible given the unique circumstances of the case. Accordingly, HUD requests that the ALJ grant its motion. If, however, the ALJ determines an oral hearing is necessary, HUD requests in the alternative that the ALJ allow the oral hearing to be conducted with all parties telephonically on February 23, 2010.

Counsel for the Secretary prays for the immediate issuance of the attached Notice of Waiver of the Oral Hearing (Attachment 8), providing the Respondents the opportunity to respond or contest the waiver of the hearing. Upon Respondents' failure to adequately respond to this motion and said notice, HUD prays for the following relief as supported in the attached Complainant's Affidavit (Attachment 9(A)) and the Memorandum in Support of Damages (Attachment 1):

1. Declare that Respondents unlawfully retaliated against Complainant for making a fair housing complaint and participating in a proceeding under the Fair Housing Act in violation of 42 U.S.C. § 3617; 24 C.F.R. §§ 100.400(b) and (c)(5);
2. Enjoin Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from unlawfully retaliating against any person in any aspect of the rental of a dwelling;
3. Waive the approximately \$2,185 in back rent currently owed by Complainant to Respondent Elite and grant monetary relief in the amount of \$20,150 to the Complainant and aggrieved parties to compensate them for their damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and
4. Impose a \$16,000 civil penalty against each Respondent for violating the Act pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'H' followed by a large 'O' and a large 'S'. The signature is written over a horizontal line.

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Gateway Tower II
Kansas City, KS 66101-2406
(913) 551-6830

Date: February 3, 2010

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Motion for Default Order Specifying Damages and Civil Penalty

Memorandum of Points and Authorities in Support of HUD's Motion for Default Order
Specifying Damages and Civil Penalties

Attachment Binder

Contains:

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Charge of Discrimination	Attachment 2
Ruling Granting Motion for Default Judgment	Attachment 3
Motion to Impose Sanctions or Compel Discovery	Attachment 4
Request for Admissions	Attachment 5
Phone Log	Attachment 6
Booking Sheet LCCC	Attachment 7
Sample Notice of Waiver of the Oral Hearing	Attachment 8

Exhibit Binder

Attachment 9

Contains:

A) Complainant's Affidavit

B) Government's Exhibits:

Order Granting Motion to Convert Miell's Bankruptcy	GOV	#1
Habitat for Humanity Article	GOV	#2
Cedar Rapids Newsletter	GOV	#3
Dr's Note Supporting Need for Companion Animal	GOV	#4
Graf Home Selling Team Letter	GOV	#5
Listing of Respondents' Rental Properties	GOV	#6
Tenant Ledger for Beverly Dittmar	GOV	#7

ATTACHMENT 1

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES**

The Secretary, United States)	
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_____)	

MEMORANDUM IN SUPPORT OF DAMAGES AND CIVIL PENALTY

I. Introduction

Complainant Dittmar and her three minor children resided in a two-bedroom single family home located at 1731 K Avenue NE, Cedar Rapids, Iowa, owned by Respondent Miell. Complainant was a tenant in good standing, was current on rental payments, and had never been issued any notices or lease violations. Respondent Miell owned and operated hundreds of other rental properties in the Cedar Rapids area and operated his rental business through Respondent Elite Properties of Iowa, LLC ("Elite"). (CH ¶ 3, 4, 5 and 9) (RFA ¶ 1, 2, 3, 4, 7, 8 and 61(o))¹

HUD issued a Determination of Reasonable Cause and Charge of Discrimination ("Charge") on September 28, 2009, alleging Respondents violated Section 818 of the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*, (the Act) by taking retaliatory actions against Complainant, including attempting to evict Complainant and her minor children after

¹The following abbreviations are used in this Memorandum: CH for Charge of Discrimination located at Attachment 2; RFA for HUD's Request for Admissions sent to Respondents located at Attachment 5; CA for Complainant's Affidavit located at Attachment 9(A); and GX for Government Exhibit located at Attachment 9(B).

Complainant participated in protected activity, namely the filing of a fair housing complaint, and cooperating in HUD's subsequent investigation. After Respondents failed to answer the Charge, Administrative Law Judge (ALJ) J. Jeremiah Mahoney granted the Motion for Default Judgment, finding Respondents liable for the acts of discrimination recited in the Charge. Pursuant to 24 C.F.R. § 180.420(b) (2009) the failure to file an answer in a timely manner "shall be deemed an admission of all matters of fact recited" in the Charge. ALJ Mahoney therefore ruled that Respondents are deemed to have admitted the matters cited in HUD's Charge of Discrimination.

Further, 24 C.F.R. § 180.530(b) (2009) states that "[e]ach matter for which an admission is requested is admitted unless...the party to whom the request is directed serves on the requesting party a sworn written answer" in a timely manner. HUD served Requests for Admissions on Respondents on November 25, 2009, to which Respondents failed to respond. Accordingly, the matters in the Requests for Admissions are deemed admitted and the only issue remaining under consideration is the appropriate amount of damages and other relief to be awarded to the Complainant and aggrieved parties.

This memorandum provides the Secretary's argument in support of a damages award of \$22,335 for Complainant and her children. This amount includes \$20,000 for emotional distress, \$150 for out-of-pocket expenses, and \$2,185 to be specifically awarded as a waiver of back rent and other associated fees (including late fees and filing fees, owed to Respondents by Complainant from the relevant time frames when Respondents refused Complainant's rental payments during their attempts to unlawfully evict her family from the subject property). This memorandum further provides the Secretary's argument for the assessment of the maximum civil penalty of \$16,000 against each Respondent.

II. Statement of Facts

During the summer of 2008, severe flooding occurred in Cedar Rapids, Iowa, damaging the rental property where Complainant Beverly Dittmar and her three minor children resided, forcing them to stay with friends. (CA ¶ 3) During her search for new housing, Complainant became aware of Respondent Elite, a property management company owned and operated by Respondent Robert Miell. (CA ¶ 4) (CH ¶ 5) (RFA ¶ 5) Respondent Miell owned hundreds of rental properties in and around Cedar Rapids and operated these properties through Elite. (RFA ¶ 7-8) While she had originally been interested in one of Respondents' apartments, Complainant applied for the subject property, located at 1731 K Avenue NE, Cedar Rapids, Iowa, in early October. She signed the lease on October 7, 2009. (CH ¶ 3-4) (RFA ¶ 10, 61(j)) During the application process, Complainant provided a note from her doctor supporting her need for a service animal that assisted with her anxiety. (CA ¶ 5 and 8) (GX #4)

On November 7, 2009, Complainant filed her initial complaint with HUD, based on her sex, alleging Respondent Miell refused to allow her to move into a three bedroom apartment and unjustly charged a \$645 security deposit. (CH ¶ 10) As detailed in the Charge, Respondent Miell was uncooperative and defiant throughout the investigative process, as evidenced in comments he made to HUD Investigator Connie Radcliff, stating Complainant's allegations were a "lynching" rope (CH ¶ 15) (RFA ¶ 22 and 24), and that Complainant could take her case "to the Supreme Court and President Obama." (CH ¶ 34) (RFA ¶ 57) Respondent Miell's disregard was most notable during a March 19, 2009, on-site investigation and interview, scheduled and agreed to in advance, in which Respondent left without notice and did not return. (CH ¶ 14 and 16) (RFA ¶ 27) Additionally, Respondent's indifference and disrespect was directed at HUD's investigators, by abruptly hanging up during a phone interview (CH ¶ 12, RFA ¶ 16), refusing to

claim certified letters during the investigative process (CH ¶ 19) (RFA ¶ 12 and 18), and by informing Investigator Radcliff that he hoped she would “get a badge from the Wizard of Oz.” (CH ¶ 15, RFA ¶ 25)

On April 1, 2009, Complainant attempted to pay her rent. An Elite employee refused to accept the payment and informed her that her lease was terminated as of March 1, 2009, and that she was to have vacated her home by March 31, 2009. (CH ¶ 18) (RFA ¶ 32-34) Complainant, a tenant in good standing, was aware that her complaint was being investigated by HUD, and inquired as to why her lease had been terminated. She was informed that she would have to talk to “Bob.” Upset and confused, Complainant left the office. (CH ¶ 9 and 18) (CA ¶ 13-15) (RFA ¶ 32-38)

Complainant had no place to move her family and did not know what she was going to do. (CA ¶ 15) Her anxiety, normally controlled by the anti-anxiety drug Xanax, became more severe. (CA ¶ 32) On or around April 2, 2009, Investigator Radcliff contacted Respondent Miell and asked why he terminated Complainant’s lease. He stated there was no reason for his decision, that her lease was for three months and it was up at the end of March 2009, and “it is just time to move on.” Investigator Radcliff informed Respondent Miell the Complainant might amend her complaint to allege retaliation. (CH ¶ 20) (RFA ¶ 39-42)

On or about April 3, 2009, Greg Vail, father of two of Complainant’s children, attempted to pay Complainant’s rent at the Respondents’ office. Respondent Miell informed Mr. Vail the lease had been terminated, and he would not accept the rent payment. He further stated Complainant needed to sign a letter stating she would vacate the property by the end of April 2009. On the same date, Complainant checked the Respondents’ website and saw that her home was listed as available for rent as of April 1, 2009. (CH ¶ 21) (CA ¶ 17) (RFA ¶ 43-47, 61(q))

On or about April 6, 2009, Complainant received a “notice to quit” letter from Respondent Miell, dated March 1, 2009, but post marked April 2, 2009. The letter, which was Complainant’s first official notice related to the eviction, notified Complainant she must vacate her home within three days, that she had failed to vacate after a 30-day notice, and she was now a hold over tenant. (CH ¶ 22) (RFA ¶ 48-51, 61(a)) (CA ¶ 18)

Complainant began looking for alternate housing but had difficulties finding another suitable home to rent. The damage from the flooding the previous summer, in addition to Respondent’s domination of the rental market in Cedar Rapids, limited the available housing from which Complainant could choose. (CA ¶ 19, 31) (GX #2, 3) Complainant felt even greater pressure when she received a letter from Realtor Mike Graf postmarked April 13, 2009, stating the home was now for sale and would need to be available for showings. (CA ¶ 20) (GX #5) A lock box was placed on her front door and a “for sale” sign was put in her yard. These tangible reminders that her housing situation was outside her control caused Complainant to feel insecure and increased her anxiety. (CA ¶ 21)

On or about April 20, 2009, Complainant received notice of an eviction hearing requiring her appearance in the Linn County, Iowa District Court on April 22, 2009. In the notice, Respondents demanded possession of the subject property, stating Complainant had failed to vacate and was a hold over tenant. (CH ¶ 24) (CA ¶ 23) (RFA ¶ 54, 61(b)) Complainant was scared of being evicted, having witnessed other people’s evictions. (CA ¶ 23) She missed her college classes to search for housing. (CA ¶ 31, 38)

Complainant’s children were showing signs of stress as well. Her 18-year-old son, Cameron, was having trouble concentrating in school. Her 17-year-old daughter, Jennah, began having arthritis type pain. Jennah was recently diagnosed with Lupus, the condition responsible

for this pain, and a condition that is aggravated and potentially triggered by stress.

Complainant's 6-year-old daughter, Deenah, 5 at the time, did not understand all that was going on, but did understand that her family was not wanted in their home. (CA ¶ 24)

On April 22, 2009, Complainant attended her scheduled eviction hearing and the judge informed her that she would be evicted on April 27, 2009. The judge indicated she was not interested in any information related to Complainant's HUD case, deeming it hearsay. (CH ¶ 25) (CA ¶ 25) (RFA ¶ 46) Complainant believed she and her children were about to be homeless. (CA ¶ 25) To prevent their belongings from being thrown on the street, Complainant paid Greg Vail \$75 to move her family's possessions into storage. (CA ¶ 26) On Saturday, April 25th, she attended a meeting held by Senator Chuck Grassley to address affordable housing concerns from those displaced by the flood. Complainant hoped to, but unfortunately did not receive, assistance from his office. (CA ¶ 27)

The weekend prior to the eviction date, Complainant could not eat or sleep. She was rapidly losing weight. (CA ¶ 26, 32) On April 27, 2009, no one arrived to evict Complainant and her family as expected. Complainant waited at the house that day, thinking she and her children were about to be forced out. (CA ¶ 28) On April 28, 2009, the day after the eviction was to have occurred, Complainant received a notice from the court stating the eviction had been dismissed due to bad dates on the notices. (CH ¶ 28) (RFA ¶ 48, 61(d)) (CA ¶ 29) She thought someone had realized that she and her children should be allowed to stay in their home. (CA ¶ 29) Respondent, however, had no intention of allowing Complainant to stay and instead filed for another eviction hearing. (CH ¶ 28) (RFA ¶ 49, 61(g)) Later that same day, Complainant's signed complaint, amended to include retaliation, was faxed to Respondent. (CH ¶ 28)

On May 1, 2009, Greg Vail went to Respondents' office and attempted to pay Complainant's May rental payment and Respondent Miell again refused it. (CH ¶ 29) (RFA ¶ 50) (CA ¶ 30) In response to an inquiry from a HUD investigator, Respondent Miell indicated that he still intended to move forward with the eviction of Complainant. (CH ¶ 30) (RFA ¶ 51) On May 6, 2009, the Complainant received a "3-Day Notice to Pay Unpaid Rent" from Respondent Miell, dated May 5, 2009, demanding unpaid rent in the amount of \$645. (CH ¶ 33) (CA ¶ 30) (RFA ¶ 54, 61(f)) On May 5, 2009, Respondent Miell failed to attend the second eviction hearing and the judge dismissed the action. (CH ¶ 32) (RFA ¶ 53, 61(g)) On May 7, 2009, Respondent Miell, whose eviction proceedings against Complainant had just been dismissed for the second time, informed Investigator Radcliff that Complainant could now remain at the subject property if she paid rent for both April and May with cash or a money order. Respondent Miell concluded the conversation by stating that Complainant's fair housing case was frivolous and she could "bring it up to the Supreme Court and President Obama." (CH ¶ 34) (RFA ¶ 55-57)

On or about May 8, 2009, Complainant received the official notice from Linn County, Iowa District Court setting out that the eviction was "dismissed--no show by Plaintiff [Respondent Miell]". (CH ¶ 35) (CA ¶ 33) (RFA ¶ 53, 61(g)) Complainant, having received no prior notice of the hearing, did not understand the dismissal, and instead feared that after refusing to accept May's rental payment, Respondent was again attempting to have her evicted. (CA ¶ 33) (CH ¶ 32) Also on May 8, 2009, Respondent Miell was taken into custody by Federal authorities and incarcerated. (CH ¶ 36) (Attachment 7) Complainant Dittmar was left wondering whether or not her family would be allowed to live in their home. (CA ¶ 33, 39)

In July 2009, Complainant resumed making rental payments to the Bankruptcy Trustee who took over the management of Respondent Miell's properties. (CH ¶ 36) (RFA ¶ 61(p)) Throughout the course of Respondent Miell's retaliatory actions, Complainant lost weight. (CA ¶ 26, 32) Her anxiety was no longer controlled by her Xanax. (CA ¶ 32) Her school studies suffered. (CA ¶ 38) Her children could not concentrate in school, felt insecure, and her 17 year old daughter Jenah, manifested physical symptoms of stress in the form of arthritis pain, recently diagnosed as Lupus. (CA ¶ 24)

III. Argument in Support of Damages: \$20,000 Emotional Distress; \$150 Out of Pocket

On finding that a respondent has violated the Act, the ALJ shall order appropriate relief, including "actual damages suffered by the aggrieved person[s]." 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.670(b)(3)(i) (2009). "The purpose of an award of actual damages in a fair housing case is to put the aggrieved person in the same position as he would have been absent the injury, so far as money can." HUD v. Godlewski, 2007 WL 4578553, p. 2 (HUDALJ 2007), (citing Schwemm, Housing Discrimination: Law & Litigation, p. 25-16, and cases cited therein.) Actual damages in housing discrimination cases may include damages for intangible injuries such as embarrassment, humiliation, and emotional distress caused by the discrimination. HUD v. Blackwell, 2A FH.--FL. (P-H) ¶ 25,001 at 25,012 (HUDALJ Dec. 21, 1989), enforced, 908 F.2d 864 (11th Cir. 1990).

Emotional distress damages may be based on inferences drawn from the circumstances of the case, as well as on testimonial proof. HUD v. Wagner, 2A FH.—FL. (P-H) ¶ 25,032 at 25,337 (HUDALJ 1992). "Because emotional injuries are by nature qualitative and difficult to quantify, courts have awarded damages for emotional harm without requiring proof of the actual

dollar value of the injury.” HUD v. Gruzdaitis, 2A FH.—FL. (P-H) ¶ 25,137 at 26,136 (HUDALJ 1998) (1998 WL 482759).

Key factors in determining emotional distress damages are the complainant’s reaction to the discriminatory conduct and the egregiousness of the respondent’s behavior. Accordingly, an intentional, particularly outrageous or public act of discrimination generally justifies a higher emotional award, because such an act will “affect the plaintiff’s sense of outrage and distress.” Schwemm, Housing Discrimination: Law and Litigation, § 25:6 at 25-35 (citing Dobbs, Handbook on the Law of Remedies, p. 530-31 (1973)). Additionally, “those who discriminate in housing take their victims as they find them. Where a victim is more emotionally affected than another might be under the same circumstances, and the harm is felt more intensely, he/she deserves greater compensation for the discrimination that caused the suffering.” HUD v. Godlewski, 2007 WL 4578553, p. 5 (HUDALJ 2007) citing HUD v. Dutra, 2A FH.—FL. (P-H) ¶ 25,124 at 26,062-63 (HUDALJ 1996) (Complainant’s fragile emotional state subjected him to greater emotional harm by Respondent’s discrimination).

In the case at hand, a significant damage award is reasonable in view of Complainant’s suffering and is in line with comparable fair housing cases. While the discriminatory actions taken by Respondent Miell in this case were based off of a retaliatory motive as opposed to discrimination based on sex or race, the consequences of his actions and the emotional distress suffered by Complainant affected her in a way similar to complainants suffering from discrimination motivated by different animus.

In HUD v. Lewis, 2A FH.—FL. (P-H) ¶ 25,118 (HUDALJ 1996), a retaliation case involving an employee of a Respondent apartment complex owner, the Complainant was ridiculed and told not to rent to Blacks or Hispanics. Complainant was then prohibited from

returning to work after she informed potential tenants that the reason they were not approved for tenancy was their race, encouraged them to file a complaint and participated in the subsequent fair housing investigation. Complainant was awarded \$10,300 in actual damages, \$2,800 for lost wages and \$7,500 for emotional distress.

In another retaliation case, United States v. Fairway Trails Limited, et al., Case No. 5:06-CV-12087 (E.D. Mich. 2007), a consent decree was approved by the court on January 18, 2007. The complaint, filed on May 8, 2006, alleged that the Defendants retaliated against the Complainant for having asserted his rights under the Act, when, two days after a state court ruling in an eviction proceeding that defendants had to accommodate the Complainant's disability by allowing him to pay his rent the third week of every month, they sent him a letter stating that his lease would not be renewed. The consent decree ordered the Defendants to pay \$50,000 to the Complainant.

While not involving a claim of retaliation, HUD v. Godlewski, 2007 WL 4578553 (HUDALJ), does address the damages that arose when a single mother encountered a discriminatory sign while looking for housing, in a singular instance of discrimination. A single mother with one child was awarded \$18,000 for emotional distress and humiliation and \$2,000 for tangible loss and inconvenience after seeing a discriminatory sign that read "No kids, no dogs." The circumstances of the case involved a mother who was pressured to find a home for herself and her son, who had faced a similar sign stating "No Blacks, No Jews, No Dogs" as a child. The similarity in the signs caused emotional flashbacks to discrimination she had faced as a black child. The mother was forced to explain to her son, who was present when she saw the sign, what discrimination was and how it was affecting them. She was very affected by the sign,

becoming agitated and angry, and dealt with migraines and stress as a result of seeing the sign for weeks afterward.

In this case, Respondent Miell's actions were far more broad and reaching than a single statement or a single letter non-renewing a lease. Respondent Miell's behavior in this case was intentional, outrageous, and public, and therefore justifies an emotional distress award of at least \$20,000. Respondent Miell, an experienced landlord with a long history of leasing rental property, owned and leased hundreds of properties. Furthermore, he repeatedly had communications with HUD investigators throughout the investigation, which included warnings and concerns about his retaliatory actions. Respondent Miell provided no legitimate, nondiscriminatory reason to HUD Investigator Radcliff when confronted about his retaliatory actions, but remained defiant and careless towards Complainant and the investigation. With Respondent's long history as a landlord, he was well aware that it was illegal to retaliate against Complainant for participating in protected fair housing activity.

Respondent Miell's actions were blatant, knowing, and willful. He repeatedly acted with complete disregard of the Act, informing Investigator Radcliff and Complainant that her claim was frivolous and a waste of time. Respondent twice refused to accept Complainant's rental payments so he could initiate public eviction proceedings against her. In anticipation of her eviction, he listed the subject property as available for rent on his company's website, and listed the property for sale with Realtor Mike Graff. He authorized the placing of a realtor lock box on the front door of the property and the placement of a "for sale" sign in the front yard. He then attended the first eviction hearing, asserting that Complainant was past due on her rent, after she had attempted in good faith to pay her rent. While he failed to attend the second eviction

hearing, he had clearly expressed his intention to move forward with eviction to Investigator Radcliff just two days before the hearing.

There are three factors in Complainant Dittmar's circumstance that contributed to her propensity to suffer damages from Respondent Miell's actions: (1) her anxiety; (2) her family's displacement by the flooding in Cedar Rapids; and (3) a limited housing market in Cedar Rapids due to the flooding and Respondent Miell's dominance of the area's rental market.

(1) Complainant's Anxiety

When Complainant Dittmar initially inquired at Respondent Elite's office about available rental properties, she immediately requested a waiver of Respondent's "No Pet" policy so she could have her cat, a companion animal that aided her with her anxiety. Complainant stated she had a doctor's note supporting her need for the animal, and supplied the note when she subsequently applied for the subject property. Complainant's anxiety, previously controlled with Xanax, made her especially vulnerable to the stress that any person would feel in a situation involving eviction. The dramatic increase in her anxiety, resulting from her fears of her family's impending eviction and potential homelessness, manifested in her inability to concentrate on her school work, her weight loss, and her loss of sleep.

(2) Displacement due to Flooding

Complainant's family had just recovered from the displacement that occurred after the flooding in Cedar Rapids the summer prior to Respondent's attempted eviction. Having been forced to find temporary shelter with friends only eight months before, Complainant's family was particularly susceptible to the stress of facing possible homelessness.

(3) Limited Affordable Housing in Cedar Rapids

The nature of the housing market in Cedar Rapids was not favorable for individuals trying to find affordable rental housing. The flooding during the summer of 2008 destroyed much of the affordable housing available in Cedar Rapids. (GX #2, 3) This, coupled with the fact that Complainant would not be able to rent from Respondent Miell, a dominant force in the rental market at the time of the retaliation as he owned at least 434 rental properties (GX #6), put Complainant at a distinct disadvantage while she searched for decent housing.

As previously set out, Complainant's children also suffered emotional distress because of Respondents' willful and callous actions. Finally, Complainant suffered out-of-pocket expenses after she was required to pay a total of \$150 to Greg Vail to move her and the children's possessions out and then back into the subject property. (CA ¶ 26 and 35)

IV. Civil Penalty

To vindicate the public interest, the Act authorizes the ALJ to impose civil penalties upon Respondents. 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R. § 180.670(b)(3)(iii) (2009). For Respondents with no prior history of discrimination, the maximum penalty is \$16,000 for each respondent. 24 C.F.R. § 180.671(a)(1) (2009) Determining an appropriate penalty requires consideration of five factors: 1) the nature and circumstances of the violation; 2) the degree of respondents' culpability; 3) the goal of deterrence; 4) whether respondents have been previously adjudged to have committed unlawful housing discrimination; and 5) respondents' financial resources. HUD v. Jerrard, FH-FL (P-H) ¶ 25,005 at 25,092 (HUD ALJ 1990) and 24 C.F.R. § 180.671(c)(i-v) (2009) Other factors may be considered as justice requires. 24 C.F.R. § 180.671(c)(vi) (2009).

(1) The Nature and Circumstances of the Violation

The nature and circumstances of Respondents' violation merit imposition of a significant civil penalty. Respondents' retaliation was a direct result of Complainant's participation in protected fair housing activity, resulting in months of distress for Complainant and her family. Respondents' actions sent a clear signal that Respondents disregarded the tenets of the Act, the supporting fair housing regulations, Complainant's rights under both, and HUD, the agency granted with investigatory and enforcement powers under the Act.

(2) The Degree of Respondents' Culpability:

Respondent Miell was the owner and operator of the subject property and hundreds of other rental properties. Respondent Miell owned Respondent Elite, the management company managing the property. Respondents had significant experience with rental transactions. Additionally, Respondent Miell was informed by HUD investigator Radcliff that Complainant was considering amending her complaint to allege retaliation, and yet he continued to move forward with his eviction attempts and to refuse Complainant's rental payments. Respondent Miell was well aware the Act prohibits retaliation and that Complainant's activity was protected under the Act. The evidence demonstrates he acted defiantly, with blatant disregard for the anti-retaliation provisions of the Fair Housing Act.

(3) The Goal of Deterrence:

The goal of deterrence in this case is significant. Those similarly situated as Respondent Miell must be placed on notice that violations of the Act will not be tolerated. Owners and management companies must be aware that retaliating against complainants for filing complaints and participating in investigations will not be tolerated. The fear of retaliation must not prevent future victims of discrimination from coming forward and protecting their rights under the Act.

That a respondent feels a complaint is without merit does not invalidate provisions of the Act. Respondents must receive a clear message that retaliation under Section 818 is prohibited just as clearly as discriminatory treatment prohibited under other sections of the Act.

(4) History of Prior Violations:

There is no history of prior violations for consideration at this time.

(5) Respondents' Financial Resources:

Respondent Miell's incarceration, bankruptcy and personal debt should not prohibit the assessment of a significant civil penalty. While these factors make it difficult for HUD to enforce whatever penalty is assessed against Respondent Miell, the circumstances are extreme and unusual and were the result of Respondent's illegal activity. Respondent should not be rewarded with a lesser penalty due to his illegal and fraudulent behavior. Additionally, even if enforcement and collection are difficult, the judgment and penalty should stand independently as a matter of deterrence.

(6) Other Factors as Justice Requires:

In HUD v. Godlewski, the Respondent refused to participate in any of the proceedings throughout the investigation and in the hearing that occurred after the Charge was filed. In her decision ALJ Constance O'Bryant wrote:

Maximum penalties should be reserved for the most egregious cases and imposed where needed to vindicate the public interest. In this case, although a first offender, Respondent has thumbed his nose at the system with regard to the prosecution of this case. He has refused to participate in the legal proceedings since the filing of the complaint in this forum. He has shown no concern for the civil rights of these Complainants or for the general public interest. His refusal to participate in these proceedings suggests disrespect for, or contempt of, the Fair Housing Act, this court, and the general public interest and is an appropriate additional factor to consider in assessing a civil penalty. Respondent's dismissive

attitude trumps the other factors that might have otherwise suggested a less than maximum civil penalty.
HUD v. Godlewski, 2007 WL 4578553, p. 10 (HUDALJ)

All of this applies to Respondent Miell in this case. Respondent has continued to exhibit defiance and refused to cooperate throughout the investigation and in this proceeding. As a result, a maximum fine of \$16,000 against each Respondent is warranted.

V. Injunctive and Affirmative Relief

After the ALJ finds that a respondent has engaged in a discriminatory housing practice, he may order injunctive or other equitable relief. 42 U.S.C. § 3612(g)(3) and 24 C.F.R § 180.670(b)(3)(ii) (2009). A court has “the power as well as the duty to ‘use any available remedy to make good the wrong done.’” Moore v. Townsend, 525 F.2d 482, 485 (7th Cir. 1975) (citing Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 239 (1969)).

(1) Waiver of Back Rent and Fees

As previously discussed, Respondent Miell’s personal financial circumstance at this time make it likely that Complainant will have difficulty collecting a damages award against him. Currently, Complainant has an outstanding rental balance with the Bankruptcy Trustee for the time frame in which her rental payments were refused by Respondent Miell. This balance, totaling \$2,185, includes the past due rent, late fees, and filing fees Respondent Miell charged when he unlawfully filed for the eviction hearings to have Complainant evicted. (GX #7) While Complainant was previously able to make timely rental payments (GX #7), was in good standing as a tenant, and has now resumed making timely rental payments to the Bankruptcy Trustee, she is unable to amass the necessary funds at this time to bring her account current. In light of this, the Secretary requests that as part of the relief granted, Complainant’s past due balance should reflect zero dollars.

(2) Enjoin Respondents from Future Discrimination

Enjoin Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from unlawfully retaliating against any person in any aspect of the rental of a dwelling. Furthermore, while Respondent is facing significant time imprisoned, should Respondent return to the business of renting properties upon his release from prison, he should be required to inform the Department and submit to fair housing training and monitoring.

VI. Conclusion

Respondent Miell has significantly harmed Complainant Dittmar and her children by his retaliatory actions. He has mocked the adjudicative process and wasted government resources, showing no remorse or concern. Accordingly, HUD requests a judgment that will properly compensate the Complainant and her family, and send a strong message to Respondents and others like them that retaliation for participating in fair housing activity will not be tolerated.

WHEREFORE, the Charging Party respectfully requests on behalf of Beverly Dittmar and her three children an order for damages totaling TWENTY TWO THOUSAND THREE HUNDRED AND THIRTY FIVE DOLLARS (\$22,335): (1) \$20,000 for Emotional Distress; (2) \$150 for Out of Pocket expense; and (3) \$2,185 of injunctive relief in the form of a waiver of Complainant's past due rental balance. Additionally, the Charging Party requests that a civil penalty of SIXTEEN THOUSAND DOLLARS (\$16,000) be assessed against each Respondent, injunctive relief as detailed above, and for such other relief as this tribunal deems appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. Ousley', is written over a horizontal line.

Heather M.F. Ousley
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Date: February 3, 2010

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES**

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of)
Beverly Dittmar and her minor children,)

Charging Party,)

v.)

Elite Properties of Iowa, LLC,)
and Robert K. Miell,)

Respondents.)

HUDALJ: 09-M-113-FH-40

FHEO No: 07-09-0078-8

**NOTICE OF WAIVER OF THE ORAL HEARING ON DAMAGES
SCHEDULED FOR FEBRUARY 23, 2010**

Respondent Robert K. Miell and Respondent Elite Properties of Iowa, LLC, are hereby put on notice that a failure to respond within 7 days to the Charging Party's Motion for Default Order Specifying Damages and Civil Penalties, submitted February 3, 2010, will, pursuant to 24 C.F.R. § 180.430(b) (2009), result in the waiving of the right to object to the motion, and will additionally result in the waiver of the right to an oral hearing on damages, currently scheduled for February 23, 2010 in Cedar Rapids, Iowa. Upon waiver of this right, a determination concerning damages and civil penalties will be reached based upon the written evidence of record.

So ORDERED,

J. Jeremiah Mahoney
Administrative Law Judge